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NEWS RELEASE

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**TENNESSEE RECEIVES MORE THAN \$11 MILLION FROM MERCK DRUG
COMPANY SETTLEMENT RESOLVING FAILURE TO PAY MEDICAID REBATES**

Tennessee Attorney General Bob Cooper today announced Tennessee received \$11.2 million this week as part of two separate settlements with drug manufacturer Merck Corp., Inc. resolving allegations the company failed to pay Medicaid rebates.

“This is a significant recovery for our Medicaid program,” Attorney General Cooper said.

This case was handled by the Tennessee Attorney General’s Office, the Tennessee Bureau of Investigation Medicaid Fraud Control Unit and the TennCare Bureau.

The settlements involving 49 states, the District of Columbia and the federal government total \$649 million. Merck is the manufacturer of the drugs Zocor, Vioxx, and Pepcid. The agreements with Merck resolve allegations that the company failed to pay rebates due state Medicaid Programs under the Federal Medicaid Drug Rebate statute. The settlements also resolve claims filed by whistleblowers in Pennsylvania, Nevada and Louisiana.

Pharmaceutical manufacturers that supply products to Medicaid recipients are required by the Federal Medicaid Drug Rebate law to give the Medicaid Programs the benefit of the “best price” available for those products. The manufacturers are required to file “best price” information with the Centers for Medicare and Medicaid Services (CMS). This information is then used to calculate rebates to be paid by these manufacturers to the state Medicaid Programs. In general, the lower the “best price,” the higher the rebate obligation. However, prices that are considered “merely nominal” are exempted from the reporting requirement. The states have maintained that “merely nominal” means the discounted price is not tied to any conditions such as volume purchase requirements or market shares.

The cases in Pennsylvania and Nevada involve two Merck discount programs wherein Merck tried to use the nominal price exceptions. The case in Louisiana involved Merck’s drug Pepcid and another discount program, Flex NP. Under this program, Merck sold various formulations of Pepcid to hospitals in bundled pricing arrangements. The states contend that Merck failed to reflect these discounts in their “best price” reports, resulting in fewer rebates paid to the state Medicaid Programs.

In addition to the monetary recovery, Merck has entered into an agreement with the United States Department of Health and Human Services' Inspector General, which will include provisions that will ensure that Merck will market, sell and promote its products in accordance with all federal health care program requirements. Merck did, however, begin voluntary compliance initiatives associated with their sales and marketing activities prior to learning of the government's investigation of the conduct associated with these settlements.